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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	**GN Docket No. 93-252**
Implementation of Sections 3(n)	)	
and 332 of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	

To: The Commission

REPLY COMMENTS OF RUSS MILLER RENTAL

Respectfully submitted,

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SUMMARY

CONGRESSIONAL OBJECTIVE

The Commission notes that a principal objective of Congress in revising Section 332 was to benefit consumers by promoting competition in the mobile services marketplace. Congress created CMRS as a new classification of mobile services to ensure that similar mobile services are accorded similar regulatory treatment. Consistent with that objective, the Commission's role is to establish a regulatory regime under which the marketplace -- and not the regulatory arena -- shapes the development and delivery of mobile services to meet the demands and needs of consumers. Reliance on market forces will ensure that the most efficient service providers prevail. This will create incentives for firms to offer innovative and improved services at the lowest possible costs, and will ensure that investment decisions are driven by consumer demands rather than regulations.[1]

We strongly believe this philosophy is what Congress intended and wish to emphasize that we believe it is paramount to test all proposed rules against this fundamental idea.

[1] FNPR par. 12

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I. INTRODUCTION

1. Russ Miller Rental is a small SMR operator in the Dallas/Fort Worth, Texas market. We operate nine 800 megahertz trunked channels in Fort Worth, five in Sherman, five in Bowie, and five in Stephenville, Texas. In addition, we operate a conventional channel in Mineral Wells and Peoria, Texas. Until it was sold in May of this year we also operated a 10 channel 900 megahertz trunked SMR system in Cincinnati, Ohio. We have been in the two way radio business since 1972 and the SMR business since 1984. We are members of both AMTA and NABER. Mr. Miller is also a member of the Radio Club of America.

II. OVERVIEW

2. We have obtained and reviewed the comments of the trade associations, manufacturers, ESMR providers and prospective ESMR providers. We have also reviewed the summarized comments of all of the commenters. There were only two commenters who are small SMR operators, a small 900 MHz SMR operator and myself. We feel the lack of participation by small SMRs in this proceeding is directly related to the lack of information in the trade press regarding this FNPRM. Of primary focus are the SMR and ESMR comments, although we do occasionally address other issues.

3. We have noticed that most of the commenters' suggestions are directly beneficial to the particular commenters' business and do not address the effects that their comments might have on others in the same or different segments of the wireless communications industry.

4. We have tried to take a more objective stance in our comments and reply comments. We address the issues from a viewpoint of "what is good for the industry and

the public," tempered by reality as to what the Commission can effectively regulate and what statute will allow. We are also concerned with what can be realistically implemented without disruption of the industry as well as disruption of existing SMR services to the public.

5. We are most concerned that disparity between the number of comments by big business and small SMRs will exert influence upon the Commission to adopt some of what we consider to be the more dangerous proposals, which are discussed below.

III. DISCUSSION

A. SERVICE AREAS

6. Various proposals were made by several commenters, all similar in certain respects, to create geographically defined areas for exclusive use of wide-area ESMR[2] systems. This concept usually involved an MTA based area for which existing ESMRs could apply for exclusive use of some part of the spectrum for which they currently are licensed. These MTA defined areas are not necessarily needed for parity, as claimed, with existing cellular systems.[3] However, the lack of an MTA based area is perceived to impede the ability to raise adequate investment capital for ESMRs. In other words, ESMR operators believe Wall Street capital will migrate to the type of systems, such as PCS, that provide the widest area seamless coverage. We believe this is the primary fear of the ESMR operators, who all need significant capital investments in order to construct their systems.

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[2] We use the term ESMR to mean any SMR operator who has the intent of constructing a wide-area digital SMR system, or who has already constructed such a system.

[3] See comments of Southwestern Bell Corp., opposing self defined service areas for ESMRs, as cellular and PCS will be disadvantaged by ESMRs. This is contrary to the claims asserted by ESMRs, which oppose self defined service areas because ESMRs will be disadvantaged by cellular and PCS.

7. This should be a Wall Street issue, not an FCC issue. We are not persuaded that market consolidation will not continue accelerating, especially when nurtured by rescinding obsolete regulations such as Loading Requirements and the Forty Mile Rule. We are also not convinced that MTAs are the proper vehicle to implement wide area licensing. There is a disparate difference in size of the MTAs.[4] Some may be ideal for an ESMR system operator, while others may contain such a large land mass, that logistically or financially it would be impracticable to construct or operate a system. This scenario places ESMR operators in certain MTAs, which may be small in area and dense in population at a significant advantage over other operators in larger, more rural MTAs.

8. Per NABER's comments, they are recommending that applications for service-area based licenses be placed on Public Notice with a 30 day period for mutually exclusive applications. Auctions will be held if competing applications are filed. As we have stated before, we oppose MTA based licenses. Notwithstanding the foregoing, publicly open mutually exclusive application windows would serve no constructive purpose as most 800 MHz frequencies are already utilized in virtually all areas of the country. Mutually exclusive applications could, however, be limited to those licensees within an MTA with constructed and operational SMR stations within that MTA. Even so, we fail to see how auctions would enter into this as the other frequencies are already licensed to other SMR or ESMR operators. We can not identify any sort of mechanism, other than negotiation among the existing licensees, that would accomplish any positive

[4] The Dallas/Fort Worth MTA extends from 125 miles West of the Texas/New Mexico border, excludes El Paso which is part of the Phoenix MTA, takes in the Texas Panhandle, extends South to Austin and continues East in a variable 50 to 200 mile wide path to the Mississippi border. By contrast, the Rochester Modified MTA consists of 13 counties and measures 70 by 120 miles.

outcome. This might take the form of "shares" in the (hopefully) resultant MTA system, similar to cellular MSA settlements. However, there is a vast difference in the value of channels in different areas of an MTA; urban vs. rural, constructed vs. unconstructed, fully loaded vs. lightly loaded, extended implementation status vs. standard construction deadline, etc. In addition, some licensees may not be inclined to be a part of such a system at all. We feel it would be very difficult for the various licensees to come to an equitable agreement with all parties involved. The underlying fact is this is not virgin spectrum, unlike the cellular MSAs were. After arguing all sides of this with ourselves, we feel that the only viable solution is self defined service areas. This would allow market forces to work in a free and open market, as they do best. Further consolidation can occur where and when necessary. Regulating parity, for the sake of parity, is unnecessary when market forces will establish parity (where it may not currently exist) on their own.

B. CONTIGUOUS SPECTRUM AND RE-TUNING

9. Various proposals have been submitted in comments (usually in conjunction with the MTA defined service areas above) which would dictate assignment of contiguous spectrum for ESMR operators, with the arguments that cellular and PCS have contiguous spectrum and it is unfair that ESMRs do not. Contiguous spectrum has advantages. It permits the application of future technologies (which may or may not require it), allows high speed, broadband data transmission and, some will argue, makes it easier to reuse frequencies throughout an area. Neither ESMR nor cellular systems operate in a broadband mode, and in urban areas neither has the spectrum to do so nor the infrastructure to support it. Contiguous spectrum may also make it easier to raise capital.

Some commenters contend that they must have contiguous spectrum in order to survive and remain competitive with cellular and PCS. We disagree.

10. Nextel has proposed that traditional SMR operators who have spectrum in the 861 - 865 MHz range would have to "trade" channels with the ESMR provider. The ESMR operator will pay all costs of re-tuning both system and customer equipment. The following provisions are also included. Only legitimate ESMRs can be licensed for ESMR frequency blocks with an August 10, 1994 cut-off date for new ESMR applications. The FCC must strictly construe all ESMR applications so it does not grant ESMR licenses to parties with no real intent of providing ESMR service. If an MTA has only one qualified ESMR licensee, that licensee gets all 200 channels above 400 across the entire MTA. ESMRs can also retain their channels below 401 (to the extent that they are not used for re-tuning) and acquire others. If there is more than one ESMR operator in the MTA, then each receives a pro rata share of the channels above 400 according to the percentage of total mobiles each ESMR operator has. The ESMR operators have agreed to pay all costs associated with re-tuning.

11. There is no doubt contiguous spectrum would be a nice "extra benefit" for ESMR operators. However, it is by no means necessary. The 800 MHz band is very mature and heavily occupied in most areas. Reallocation of any part of the band would only serve to delay the implementation of ESMR service. The ensuing turf battles that would most certainly result from such a move would divide the industry.

12. Conversion of the 200 SMR category channels from 401 to 600[5], creating a 10 MHz clear, exclusive-use block of spectrum for ESMR operators, will further add to

[5] See Comments of Nextel.

the FCC's application processing backlog as thousands of licenses will require assignment as well as relocation. Although the channels we operate will not be affected by this proposal, we sympathize with those SMR operators who will be impacted. In addition, only in the largest metropolitan areas would this number of channels actually be needed.[6]

13. ESMR operators already have an equal to or greater than number of channels in the Metropolitan Statistical Areas as each cellular operator.[7] Taking this into consideration along with: a) the headstart cellular has over ESMR, b) cellular's defined service area (which for marketing purposes is now self defined due to cellular consolidation), c) cellular's current loading to capacity in metropolitan areas, d) current cellular and ESMR (including traditional SMR) cash flow from existing operations, e) lack of an accepted digital cellular standard, f) need for both cellular and ESMR to replace existing infrastructure to remain viable against each other and PCS, g) requirement of PCS licensees to relocate displaced microwave operations, h) time needed to develop PCS equipment, i) spectrum auction requirement for PCS licensees, j) headstart of both cellular and ESMR over PCS, and k) current equipment feature

[6] See June 7, 1990 Comments of FleetCall. FleetCall filed these Comments in support of their original waiver request to provide ESMR service. Page 16, par. 1 states: "In those EGA extensions beyond a 100-mile radius, FCI would limit its frequency reuse, as a result of limited demand, to no more than 20 percent of the total ESMR frequencies in the market."

[7] Calculated by multiplying number of consolidator controlled channels in an area (assume 200) by 6 times digital capacity increase, compared to 416 cellular channels multiplied by a 3 times digital capacity increase. In addition, cellular has a regulatory obligation to continue to serve existing analog units which will account for a 2 times decrease in capacity for the number of potentially digital channels that will be used to support these analog units (assume 10 percent ten years from now). This relates to 1200 ESMR channels vs. 1248 cellular channels, less 83 potential digital channels set aside for analog use = 1165 cellular channels. [1248 - (1248 x .1)] + [(1248 x .1)/ 3] = 1165. We realize it could also be argued that ESMR and cellular are not equal in number of channels, as they are unequal in amount of spectrum. However, with implementation of current and planned technologies, they are equal from a subscriber capacity basis.

advantages of ESMR over cellular; we believe substantial parity already exists between ESMR, cellular and PCS operators.

14. If the Commission plans to implement block licensing in the 861/865 MHz band it would make sense to discontinue all new applications for 861/865 frequencies as NABER requests to deter speculation. However, it also prevents any legitimate SMR operator from expanding its system or creating a new system in areas where channels are available. There are legitimate reasons for utilizing 861/865 frequencies for these purposes. Many radios are currently in service which will not operate on the 856/860 frequencies or will not operate over a broad enough frequency spread to cover the entire 856/865 MHz band.

15. According to AMTA's comments ESMR spectrum cannot be considered functionally equivalent to cellular as frequencies are shared with traditional SMR stations. This statement may be somewhat misleading. In parts of any ESMR operator's service area (depending on the geographic size of the area) most, if not all, frequencies will be reused at the proper distances, not shared. Since the 800 MHz band is mature spectrum, this should not come as a surprise. These frequencies are reused by not only traditional SMR stations, but ESMR stations as well. AMTA's basic statement makes sense on the surface, but does it really matter if the frequencies are reused elsewhere as long as co-channel mileage limitations are maintained and the ESMR operator has acquired an adequate number of frequencies to maintain a grade of service over a self defined operating area? It should be noted that in urban areas, the ESMRs already have the vast majority of 861/865 channels. In rural areas, there is no need of 200 or more channels.

16. Nextel states that ESMRs are more restricted in their operating environment than cellular, as ESMRs currently have no geographically defined operating area, no clean frequencies and no contiguous frequencies. This is true. However, all ESMR operators have been in the SMR business for some time now and all knew this when they decided to invest in the ESMR business and start consolidating spectrum. Every ESMR application reflects this, if not directly, then by the way the frequencies are licensed for reuse at all locations where possible. We view the above comment as an attempt by Nextel to take advantage of the CMRS Proceeding and have the government give what has not yet been acquired.

17. Nextel's comments that a 200 channel block is not large enough to be equal to cellular, and that ESMRs will need additional channel capacity to be competitive with cellular (by acquiring additional channels below 401 by auction and gradual migration of spectrum through market forces) are disturbing. If this block is not enough to create regulatory parity, which we feel is not true (see footnote 7), then there is no need to reallocate the majority of SMR trunked channels in the 800 MHz band. In fact, if market forces continue along the path they have taken so far, not only will more channels be acquired by the ESMRs over the next twelve months or so, but they will be able to achieve contiguous spectrum in most markets through channel trading among themselves.

18. The 800 MHz frequency band has, in most areas, matured to a viable combination of dispatch and interconnect service offerings. There is already a very large installed customer base operating on these frequencies. A significant amount of the current subscriber equipment in service is not capable of operation on all frequencies in the

800 MHz band (only 861 - 866 MHz) and would have to be replaced if contiguous spectrum were allocated for ESMR use only. It is our opinion that the disruption of service to subscribers and resultant loss of productivity due to loss of man hours that would result from any re-allocation of these frequencies to achieve a contiguous spectrum assignment negates any benefits that would be derived from doing so.

19. If the Commission should decide to adopt this proposal, any and all costs, including business lost, and time lost for relocating SMR channels, should require compensation at the traditional SMRs standard shop rates.

C. SHORT SPACING RULES

20. In NABER's comments, they propose that short spacing rules be retained for transmitter based licenses. Perhaps existing short spacing rules should be retained only to the extent they would allow an existing SMR licensee, who has a co-channel licensee 70 miles (or some other short spaced distance away) to make a de minimis move to relocate its station. Short spacing between ESMR licensees should be retained as is. ESMR licensees typically use low power, low tower systems similar to cellular systems. Short spacing is much more appropriate under these conditions, but has caused disruption to previously reliable service areas of high power, high tower systems.

D. FREQUENCY COORDINATION

21. NABER also makes several proposes regarding frequency coordination. One proposal is to require frequency coordination for 856/860 trunked licenses. We have a basic problem with frequency coordination. Back in the days of frequency databases on microfiche, which were updated every six months, frequency coordination served a very

useful purpose. Today, with the FCC database in operation, frequency coordination is merely an extra cost formality. Other than speculators, who use frequency coordination to obtain frequencies which they would otherwise not know are available, most SMR operators and two-way dealers "coordinate" their own frequencies and forward the information to the coordinator for a "rubber stamp" approval.

22. Another proposal of NABER's is to become the Part 22 paging coordinator. Part 22 license information is on the FCC database also.

23. NABER also requested the Commission allow conditional licensing in the 800 band after 45 days from the application date if the frequency was coordinated. Although conditional licensing is currently allowed in certain services upon receipt of frequency coordination, it is allowed only for shared or potentially shared frequencies. Normal Commission processing time is usually not much longer than 45 days. If more expeditious action is required it can be effected by a STA. This would only be a temporary quick fix for the FCC's current backlog of applications and is not within the scope of this rule making proceeding.

E. 220 MEGAHERTZ

24. NABER's comments supported re-licensing 220 MHz for MTAs & BTAs now. The first licenses for the 220 MHz band were issued in early 1993. The Commission is well aware of the difficulties encountered in granting these licenses. According to information from industry sources, there are over 100 of these systems that are currently constructed and many more in the process. Consolidators have operated in this segment of the industry since its inception and regional networks are already planned

with a few partially operational. To re-regulate this industry now would be an injustice to those that have invested heavily in getting it off the ground. There are however, several proposals presented in Comments to allow regional and multi-regional networks an extended implementation period. We agree with these proposals in principle and ask that the Commission weigh their merits. We do caution about too long of an implementation period, as it will only delay service to the public.[8]

25. If the Commission is unable to grant modifications to 220 MHz licenses for technical problems, then we support permitting the applicant 60 days to correct problems instead of canceling the license.

F. 900 MEGAHERTZ WIDE AREA PAGING

26. Performance bonds for 931 MHz wide-area paging licenses were proposed. Performance bonds are a good idea in principle to prevent speculation from those that have no intent of constructing a system. A performance bond is also difficult, if not impossible, for a small company to obtain. All bonding companies require small companies such as mine to have substantial liquid assets that can be attached to secure the bond. This makes it impracticable to construct the system as virtually all assets are already obligated to the bonding company and banks will not loan the money for construction under these circumstances. Perhaps a monetary forfeiture, and/or forfeiture of existing licenses (not limited to PCP licenses) would be a more suitable vehicle to ensure construction.

[8] In our Comments, we proposed a one year extended implementation period with construction benchmarks for qualified multi-regional systems.

G. STATION IDENTIFICATION

27. NABER proposed that station identification be altered to identification at +/- 5 minutes from the top of the hour. As stated in our comments, we believe station identification requirements should be expanded, not relaxed. The requirement of identification within 5 minutes either side of the hour will require a real time clock with a back-up battery in all equipment so affected by this proposal. Most current equipment only has a timer that can be set to generate a station ID every 15 or 30 minutes. Due to the additional costs that would be incurred by the system operators, compared to the insignificant benefits, we must reject this proposal.

H. SPECIAL TEMPORARY AUTHORITY

28. NABER proposed that frequency coordination be required for STAs. Frequency coordination is already required (on coordinated frequencies) for applications for STAs which request authority to operate over 180 days. Special Temporary Authority is only that: Special and Temporary. It has been used, not abused, successfully for decades. It is granted on a secondary, non-interference basis and does not prejudice any application which has been, or may be filed for the facilities for which the STA is granted. The FCC staff has the authority to deny any STA request based upon its merit. We see frequency coordination for STAs on exclusive channels as an unnecessary expense to the licensee which is supported by no valid reasons.

I. DELETION OF RULE 90.477(b)

29. AMTA has proposed deleting Rule 90.477(b). This will make interconnect co-primary on 800 MHz shared channels. We do not believe this would be in the best

interests of existing licensees on these frequencies. Instead, perhaps 90.477(b)(2) should be revised so as not to apply to CMRS licensees.

J. FORTY MILE RULE

30. Nextel's comments propose eliminating the 40 Mile Rule and Loading Requirements for ESMRs only. We believe that the 40 Mile Rule and Loading Requirements should be eliminated for all SMRs. The Forty Mile Rule is obsolete. Both the Forty Mile Rule and Loading Requirements served their purpose well when the SMR industry was in its infancy, but now present an obstacle to implementation of advanced technology systems and delivery of advanced services to the public.

31. There is an assumption in many comments that any CMRS operator(s) who invest in construction and operation of a system will load the system and not hoard spectrum. As per our Comments, we believe this is not necessarily true with the vast amount of surplus equipment becoming available from digital ESMR conversions.

32. We believe the number of channels necessary to provide even the highest level of service outside of a 100 mile radius of the center of the urbanized areas as listed in 90.635 is far fewer than required within the urbanized areas. We are concerned about the ability of any one entity applying for all frequencies in the country where they are still available. Therefore we propose to limit the number of channels a SMR or ESMR operator may control outside of a 100 mile radius of the urbanized areas to no more than 20 percent of the total ESMR frequencies in the market.[9] This should alleviate most concerns of eliminating the Forty Mile Rule.

[9] Those SMRs or ESMRs currently with more than 20% should be grandfathered. Additional channels may be obtained upon a showing of need.

K. SPECTRUM CAP

33. In our original comments, we opposed a spectrum cap. However, if the Commission creates a MTA grant for ESMR providers and grants them exclusive use of channels 401 - 600, we believe that the spectrum cap currently in place for cellular and PCS should apply to ESMR operators as well, and should include all 800 MHz and 900 MHz channels.

L. HEIGHT/POWER LIMITATIONS

34. Many of the cellular and RBOC companies proposed that to help create regulatory parity, SMR antenna height and power limits should be reduced to cellular limits. We disagree. We believe that technical parameters of different types of systems require different power limits and heights to achieve system capabilities. Instead of reducing the SMR standards, cellular power levels and antenna heights should be increased to that allowed for SMRs. This would create true technical symmetry since the type system employed would determine the spacing, height and power of transmitters. This would allow greater coverage for rural[10] cellular systems (more cost effectively) where capacity and frequency reuse is not a concern. Conversely, reducing SMR power levels to that of cellular would force relocations of SMR stations from building tops and cause disruption of service to SMR subscribers who are accustomed to, and require certain levels of building penetration or range. Power and height limitations for other bands, such as 220 MHz, should take the propagation characteristics of that band into consideration.

[10] Urban systems in either cellular or ESMR services operate (at their discretion) low power, low tower systems to achieve increased capacity through frequency reuse.

M. LICENSE MODIFICATIONS

35. All CMRS licensees should be allowed to construct fill-in stations or move stations without pre-authorization as long as they stay within their self-defined footprint, are located 70 miles from co-channel licensees, and properly notify the Commission.

IV. CONCLUSIONS

36. The introduction of geographic areas and contiguous spectrum allocations discussed above have caused a great deal of anxiety among both traditional SMR operators, who do not want to be relocated to other frequencies, and ESMR operators, who are afraid they will not be able to raise enough capital under favorable terms to build out their systems. We have attempted, but have not been able to devise a solution for the defined service area problem that we believe would be acceptable to either the industry or ourselves. However, we emphatically note that as a result of the consolidation that has occurred to date, all consolidators have self-defined their service areas through their acquisition and marketing plans. These consolidators are also already trading channels among themselves, merging with and acquiring each other as well as acquiring traditional SMRs. This has resulted in increased self definition and expansion of service areas and in some cases almost contiguous spectrum.

37. We are concerned that any regulatory imposition of service areas will inadvertently harm some of the consolidators,[11] while creating fortuitous windfalls for

[11] We see no way to fairly assign geographical areas by MTAs or any other artificial boundaries, when in reality, self defined areas have already been created which cross these boundaries and overlap existing self defined service areas of other operators. Most of these operators have invested considerable sums in acquiring spectrum and establishing infrastructure. In most cases this includes real estate, towers, service shops and employees. This also raises the question of how existing ESMR (currently traditional SMR) customers, many who operate across boundaries, will be divided among MTAs and ESMR operators.

others. Many areas currently have more than one ESMR operator. While this may not be the most absolute efficient use of spectrum, and will surely create duplication of facilities and services, it will also ensure healthy and vigorous competition between the players in the fledgling ESMR industry. The result of this competition will be more attractive service offerings to the public, with more advanced features, at more competitive prices. In comparison with cellular which has geographic boundaries and suffered licensing delays and the subsequent delays in bringing service to the public,[12] ESMRs have, especially considering equipment development time, done a remarkable job of establishing operational systems.

38. Further consolidation will no doubt continue among ESMRs and with traditional SMRs. As a result, service areas will continue to be defined and refined. These service areas will be based upon real world market conditions and costs of logistical support facilities.

39. In order to compete effectively with wide-area ESMRs, (which will be offering its customers a combination full duplex phone, dispatch radio, alpha-numeric pager, text messaging and facsimile interface) traditional SMRs must be allowed the regulatory flexibility to migrate to new technologies as they become available, including digital formats such as ESMR. In some cases an urban SMR would be happy to just increase its capacity by converting to digital technology, but faced with significant competition from ESMRs (a traditional SMR is no threat to an ESMR) will need to offer

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Most of the customers operating on the frequencies of the current consolidators were acquired along with the associated frequencies on a cash flow multiple basis.

[12] In many not so rural areas of the country cellular service is just now being provided, 10 years after cellular's introduction.

the same enhanced services as ESMRs (although on a much smaller scale) in order to retain its existing subscriber base. To the extent the traditional SMR is able to obtain, or form alliances with other SMR operators to mass the necessary frequencies to implement a pseudo-wide-area system, it should be allowed to do so. It is the publicly stated marketing intention of Nextel to address the traditional SMR subscribers first when loading its ESMR systems. In order to protect the traditional operators, they need to be given the ability to compete with ESMR operators.

40. At some point in the future we foresee most of the entire 15 MHz of the 800 MHz frequency band being used for some type of digital ESMR-like service. The increased capacity that will be gained, coupled with the user convenience of having a single, do-all widget type of communications device that would replace the current multitude of devices now being used will create a considerably greater demand and public awareness of mobile communications, which in turn will increase productivity for that much larger base of users.

41. We therefore propose that the Commission take no actions which would interfere with the current market forces, which have to date performed admirably in bringing expedient service to the public at competitive prices.

42. If, however, the Commission decides it should act on reallocating the 800 MHz spectrum or issue frequencies based on geographic service areas, then we respectfully request the Commission consider balancing its action(s)[13] with equal and

[13] Contra-regulations might consist of a requirement that ESMR providers, after "trading" their 856/860 frequencies for traditional SMR's 861/865 MHz channels, relinquish what 851/860 channels they have left to the Commission. The Commission could then re-issue these channels to the traditional SMRs remaining in the same market for expansion of their existing systems. This will allow the remaining traditional SMRs to provide service to the ESMR operator's (current analog) subscribers (continued)

opposite action(s) in order to maintain a balanced market. We see no advantage in application of regulations and contra-regulations to balance an industry which appears to already offer healthy and competitive services to the public.

13. continued: who have not fully amortized their analog equipment, and do not wish (or can not afford) to migrate to ESMR equipment and service at this time.